

Munoz v L.I. Green Guys LLC
2024 NY Slip Op 35728(U)
January 28, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 203098/2022
Judge: Deanna D. Panico
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Short Form Order

INDEX NO: 203098/2022

Supreme Court of the State of New York
IAS Part 23 - County of Suffolk

PRESENT: Hon. Deanna D. Panico

KRISTY MUNOZ,

Plaintiff,

- against-

L.I. GREEN GUYS LLC and VINCENT
VERDERAME,Defendants.

ORIG. RETURN DATE: 9/18/24

ADJOURNED DATE: 12/5/24

MOTION SEQ. NO.: 002 - MD
003 - MDPLTF'S/PET'S ATTY:Leitner Varughese Warywoda, PLLC
425 Broadhollow Road, Suite 417
Melville, New York 11747DEFTS/RESP'S. ATTY:Brand, Glick & Brand, P.C.
90 Merrick Avenue, Suite 203
East Meadow, New York 11554

Upon efiled documents numbered 44-52, 54-58; it is

ORDERED that Defendants' motion seeking leave to reargue (002) its prior motion to strike Plaintiff's complaint or compel disclosure, is denied; and it is further

ORDERED that Plaintiff's motion seeking sanctions for frivolous conduct (003), is denied.

The within action seeks damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on April 28, 2022. Issue has been joined and discovery commenced. Defendants previously moved seeking an order striking Plaintiff's complaint, pursuant to CPLR§3126, or compelling disclosure pursuant to CPLR§3124. The discovery sought consisted of all of the photographs from Plaintiff's engagement party, which took place on April 30, 2022, all of the photographs from Plaintiff's wedding, which took place in Mexico on July 22, 2022, and photographs from Plaintiff's honeymoon in Rome and on a cruise, which was in or about August 2023. These demands were contained in a Notice for Discovery and Inspection dated October 6, 2023. Plaintiff objected to production, stating that: "Plaintiff objects to this demand as irrelevant, vague, unduly burdensome and not discoverable per CPLR and case laws." By order dated August 5, 2024, the Honorable Vincent J. Martorana denied Defendants' motion. Defendants now seek to reargue their motion on the basis that the court misapprehended the facts and law.

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Justice Martorana's order provided that the basis for denial of Defendants' motion was, in part, that:

Defendants have offered nothing substantive in support of the premise that disclosure of the photographs at issue would be material and necessary or even relevant to the prosecution or defense of this action. Furthermore, Defendants do not relate the purported need for disclosure to the actual injuries and limitations claimed. "Under the circumstances of this case, the defendants failed to demonstrate that the discovery sought was reasonably likely to yield relevant evidence regarding the severity of the alleged injuries suffered by the plaintiff" (*Sereda v. A.J. Richard & Sons, Inc.*, 219 AD3d 1458, 1459, 196 NYS3d 174 [2d Dept. 2023] (*citing Forman v. Henkin*, 30 NY3d 656, 665, 70 NYS3d 157 [2018], *citing Gentile v. Ogden*, 208 AD3d at 857)). Defendants' argument seems to be that they are entitled to unfettered access to Plaintiff's photographs simply because they were taken in the months and years after the accident. They have not presented a cogent argument that the disclosure sought is reasonably calculated to contain relevant information (*Forman v. Henkin*, *supra*). The portion of Defendants' motion seeking to compel disclosure is therefore denied.

It is noted that in their initial moving papers on the prior motion, Defendants had not mentioned the nature of the injuries claimed and had not cited any relevant testimony by Plaintiff except to generally state that Plaintiff admitted that she had a wedding, engagement party and honeymoon. Plaintiff did not deny having danced at her wedding and having done some walking on her honeymoon.

Defendants argue that the court overlooked the fact that the accident was two days prior to the engagement party and that Plaintiff ultimately went to Mexico to be married and on a cruise for her honeymoon. The court did not overlook this, movants failed to establish why the photographs were material and necessary. Defendants claim that this was not the standard used by Justice Martorana in his August 5, 2024 order. Defendants state that their request was "for targeted discovery based on known information and every day common sense." Defendants claim that the court imposed an unfair burden upon them "...to demonstrate exactly what those photographs would show. As opposed to whether the information that was being requested could be material and necessary." Defendants also claim that the court did not understand what they were seeking and argue that the precedent cited by the court was inapposite.

As Plaintiff points out in her opposition, Defendants mischaracterize the content of Justice Martorana's order and mischaracterize the demands at issue. They also misunderstand the caselaw. The order set forth exactly what was in contention based upon the demands that were served and made part of the record. Plaintiff accuses Defendants of failing to properly read the order before bringing the motion, as well as referencing the wrong documents in the NYSCEF record. On their initial motion, Defendants made similar errors. Plaintiff asserts the reargument motion to be frivolous and cross-moves seeking sanctions. In opposition and reply, Defendants' counsel states that they found some pictures on the internet of Plaintiff being held by her husband in a position that Defendants believe to be inconsistent with her injuries. Defendants' belief in this regard is

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immaterial to the determination of whether or not Justice Martorana misapprehended the facts or law in reaching his decision. Furthermore, Plaintiff's counsel explains that the photographs were actually taken prior to the accident and used for announcements and the like in advance of the wedding.

A motion for leave to reargue must be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining a prior motion, and may not be used to advance arguments different than those presented on such prior motion (CPLR 2221 [d] [2]; see *Grimm v Bailey*, 105 AD3d 703, 963 NYS2d 277 [2d Dept 2013]; *Haque v Daddazio*, 84 AD3d 940, 922 NYS2d 548 [2d Dept 2011]; *Foley v Roche*, 68 AD2d 558, 418 NYS2d 588 [1st Dept 1979]). Reargument may be granted upon a showing that the court overlooked or misapprehended the facts or the law "or for some other reason mistakenly arrived at its earlier decision" (*Carrillo v PM Realty Group*, 16 AD3d 611, 611, 793 NYS2d 69 [2d Dept 2005]; see e.g. *Grimm v Bailey*, 105 AD3d 703, 963 NYS2d 277; *E.W. Howell Co., Inc. v S.A.F. La Sala Corp.*, 36 AD3d 653, 828 NYS2d 212 [2d Dept 2007]). It is "not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*McGill v Goldman*, 261 AD2d 593, 594, 691 NYS2d 75 [2d Dept 1999]; see e.g. *Sheldrake Riv. Realty, LLC v Village of Mamaroneck*, 106 AD3d 1075, 966 NYS2d 188 [2d Dept 2013]; *V. Veeraswamy Realty v Yenom Corp.*, 71 AD3d 874, 895 NYS2d 860 [2d Dept 2010]).

Defendants have failed to establish any misapprehension or mistake in the court's prior determination. Accordingly, Defendants' motion to reargue is denied.

Plaintiff seeks sanctions based upon what her attorney asserts to be the frivolous conduct of Defendants' counsel, paired with a level of carelessness by Defendants' counsel which needlessly complicates motion practice. Defendants counsel opposes Plaintiff's motion, accusing Plaintiff of failing to properly respond to a Notice to Admit (the defect was immediately cured) and attempting to delay discovery. It is noted that there appears to be a second notice to admit in the record, but neither notice to admit actually has any relevance to the motions before the court. Defendants also include a copy of Plaintiff's medical record. This does little to support their opposition to the sanctions motion. It may be intended as further support of the motion to reargue. Even if the court were to deem it to be properly submitted and in evidentiary form, it would not change the court's determination with respect to reargument.

22 NYCRR 130-1.1 permits a court, in its discretion, to award "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct." Frivolous conduct for the purposes of 22 NYCRR 130-1.1, is defined as:

(c) For purposes of this Part, conduct is frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

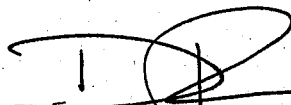
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Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

Although Defendants' counsel's actions may have caused some delay and confusion, at this juncture, the court declines to find that Defendants' counsel's conduct rises to the level of frivolousness warranting sanction. Plaintiff's cross-motion seeking sanctions is therefore, denied.

Dated: January 28, 2024
Riverhead, New York



DEANNA D. PANICO, J.S.C.

CHECK ONE: _____ FINAL DISPOSITION X NON-FINAL DISPOSITION